## MISSOURI COURT OF APPEALS WESTERN DISTRICT

#### COMPLETE TITLE OF CASE:

IN THE ESTATE OF KEVIN N. MERRITT, DECEASED, BY AND THROUGH ITS DULY APPOINTED PERSONAL REPRESENTATIVE, MONIQUE MERRITT,

Respondent

v.

REBECCA L. WACHTER,

Appellant

FIDELITY BROKERAGE SERVICES, LLC.,

Respondent

### **DOCKET NUMBER WD76581**

DATE: APRIL 29, 2014

Appeal From:

Circuit Court of Platte County, MO The Honorable James Walter Van Amburg, Judge

Appellate Judges:

**Division Three** 

Anthony Rex Gabbert, P.J., Victor C. Howard, Thomas H. Newton, JJ.

Attorneys:

James D. Boggs, W. Christian Boggs, Kansas City, Counsel for Respondent Monique Merritt;

Jane Alison Auxter, Kansas City, Counsel for Respondent, Fidelity Brokerage Services, LLC.

Rebecca Wachter, Appellant Acting Pro Se

# MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

### IN THE ESTATE OF KEVIN N. MERRITT, DECEASED, BY AND THROUGH ITS DULY APPOINTED PERSONAL REPRESENTATIVE, MONIQUE MERRITT,

Respondent,

v.

REBECCA L. WACHTER,

Appellant,

FIDELITY BROKERAGE SERVICES, LLC.,

Respondent.

WD76581 Platte County

Rebecca Wachter appeals the circuit court's judgment removing her as the beneficiary of her deceased ex-husband, Kevin N. Merritt's, rollover individual retirement account (Fidelity IRA) and substituting his estate as the beneficiary. Wachter contends that the circuit court erred: (1) in interpreting the Kansas Judgment Decree of Divorce and the corresponding Property Settlement Agreement between Wachter and Merritt by failing to interpret the Property Settlement Agreement pursuant to its Kansas choice of law provision; (2) in interpreting the Kansas divorce decree and property settlement agreement because the court failed to recognize the effect of K.S.A. 60-1610(b)(1), amended to K.S.A. 23-2802, and K.S.A. 59-610 because these statutory requirements render immaterial any unspecified intention of the parties and require the decedent's beneficiary designation be honored; (3) in interpreting the Kansas divorce decree and corresponding property settlement agreement to revoke Merritt's beneficiary designation because the court failed to recognize the effect of Kansas law in that the divorce decree and property settlement lacked specific provisions for beneficiary designations for the Fidelity IRA and, therefore, the beneficiary designation on record must be upheld; (4) in interpreting the Kansas divorce decree and property settlement and ordering Fidelity to revoke Merritt's beneficiary designation because Merritt had a statutory duty pursuant to K.S.A. 60-1610(b)(1), amended to K.S.A. 23-2802, to change the beneficiary and he failed to do so; and (5) in ordering Fidelity to revoke Merritt's beneficiary designation because the court failed to uphold the contract between Merritt and Fidelity which requires that an account holder's beneficiary designation be determined by the account owner and defined by the plan documents.

### REVERSED AND REMANDED

### **Division Three Holds:**

- (1) As we reversed on other grounds, we need not determine whether the circuit court erred in interpreting the Kansas divorce decree and property settlement agreement by failing to interpret the Property Settlement Agreement pursuant to its Kansas choice of law provision.
- (2) As we reversed on other grounds, we need not determine whether the circuit court erred in interpreting the Kansas divorce decree and property settlement agreement by

- failing to recognize the effect of K.S.A. 60-1610(b)(1), amended to K.S.A. 23-2802, and K.S.A. 59-610.
- (3) As we reversed on other grounds, we need not determine whether the circuit court erred in interpreting the Kansas divorce decree and property settlement agreement by failing to recognize the effect of Kansas law in light of the divorce decree and property settlement agreement lacking specific provisions for beneficiary designations for the Fidelity IRA.
- (4) As we reversed on other grounds, we need not determine whether the circuit court erred in interpreting the Kansas divorce decree and property settlement agreement by ordering Fidelity to revoke Merritt's beneficiary designation in light of K.S.A. 60-1610(b)(1), amended to K.S.A. 23-2802.
- (5) The circuit court erred, pursuant to *Egelhoff v. Egelhoff ex rel. Breiner*, 121 S.Ct. 1322 (2001), in ordering Fidelity to revoke Merritt's beneficiary designation and in failing to order the proceeds distributed to Rebecca Wachter as the named beneficiary of the Fidelity IRA.

Date: April 29, 2014

Opinion by Anthony Rex Gabbert, Judge

\* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \* \*

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.